

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Todd et. al.
Serial No: 10/762,044
Filed: January 21, 2004
For: METHODS AND APPARATUS FOR MODIFYING A RETENTION
PERIOD FOR DATA IN A STORAGE SYSTEM
Confirmation No.: 4481

Examiner: Etienne Leroux
Art Unit: 2161

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

A Notification of Non-Compliant Appeal Brief was mailed in connection with this application on March 17, 2009 and alleged that the Appeal Brief failed to comply with the requirements of 37 C.F.R. 41.37(c)(1)(v1), asserting that Section VI of Appellant's Brief did not list claims 1, 20, 39, 58, 65, and 72 within the grounds of rejection to be reviewed on appeal.

After receiving the Notification of Non-Compliant Appeal Brief, Appellant's representative Scott J. Gerwin left a voicemail for Patent Appeals Specialist Cassandra Paris on April 2, 2009, seeking clarification as to the reason that the Notification was issued, and noting that Section VI of Appellant's Brief did list each of claims 1, 20, 39, 58, 65, and 72 within the grounds of rejection to be reviewed on appeal.

In response, Ms. Paris left a voicemail for Mr. Gerwin on April 7, 2009 in which she indicated that the Notification of Non-Compliant Appeal Brief did not correctly identify the appealed claims that were not listed in Section VI in the Appeal Brief and indicated that she would withdraw this Notification of Non-Compliant Appeal Brief and issue a new Notification of Non-Compliant Appeal Brief that correctly identifies the appealed claims that were not listed in the ground of rejection to be reviewed on appeal in Section VI of the Appeal Brief.

On April 8, 2009 a Letter Withdrawing the Notice of Non-Compliant Appeal Brief of March 17, 2009 was mailed, and on April 10, 2009 a new Notice of Non-Compliant Appeal Brief was mailed indicating that Section VI of Appellant's Brief does not list appealed claims 52, 53-55, 59, 61, 67, 68, 73, 75, and 78-80 among the grounds of rejection to be reviewed on appeal.¹

The sole basis on which the Appeal Brief is alleged to be defective is failure to list all appealed claims within the section of the brief identifying the grounds of rejection to be reviewed on appeal. The Notice of Non-Compliant Appeal Brief indicates that an entire new brief need not be filed to correct this alleged defect. Therefore, the following replacement "Grounds Of Rejection To Be Reviewed On Appeal" is being submitted in response to the Notification of Non-Compliant Appeal Brief to replace the corresponding section in the Appeal Brief submitted February 5, 2009. The replacement section lists all claims that are appealed, as required by the Notification.

¹ The Notification of Non-Compliant Appeal Brief mailed April 10 states that the Appeal Brief filed March 17, 2009 is defective. However, no Appeal Brief was filed on that date, as the Appeal Brief at issue was submitted February 5, 2009. Appellant assumes that this an oversight and that the Notification intended to allege that the Appeal Brief of February 5, 2009 is defective. If this assumption is not correct, clarification as to which filing is alleged to be defective is respectfully requested.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. §41.37(c)(1)(vi))

The grounds of rejection to be reviewed on appeal are:

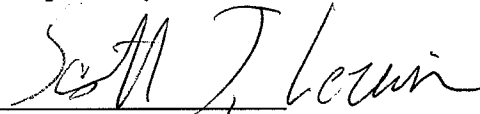
1. The rejection of claims 1-10, 14, 15, 17, 20-29, 33, 34, 36, 39-48, 52, 53, 55, 58-63, 65-70, 72-77, 79, and 80 under 35 U.S.C. §103(a) as purportedly being obvious over Bazoon (U.S. Pub. No. 2004/0249871) in view of Parson (2004/0083347);
2. The rejection of claims 11, 12, 30, 31, 49 and 50 under 35 U.S.C. §103(a) as purportedly being obvious over Bazoon in view Parson, and further in view of Beresnevichiene (U.S. Pub. No. 2005/0076293);
3. The rejection of claims 13, 32, and 51 under 35 U.S.C. §103(a) as purportedly being obvious over Bazoon in view of Parson, further in view of Beresnevichiene and further in view of Chang (U.S. Patent No. 6,690,774); and
4. The rejection of claims 16, 18, 19, 35, 37, 38, 54, 56, 57, 64, 71 and 78 under 35 U.S.C. §103(a) as purportedly being obvious over Bazoon in view of Parson, further in view of DeKimpe (U.S. Patent No. 6,542,895).

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Respectfully submitted,

By: 

Scott J. Gerwin, Reg. No. 57,866
Wolf, Greenfield & Sacks, P.C.
600 Atlantic Avenue
Boston, MA 02210
(617) 646-8000

Date: April 30, 2009